



General Assembly

February Session, 2000

***Amendment***

LCO No. 3052

Offered by:

REP. EBERLE, 15<sup>th</sup> Dist.

To: Subst. House Bill No. 5788

File No. 328

Cal. No. 261

***"An Act Concerning Certification And Background Checks For Home Health Aides And Background Checks For Emergency Medical Technicians, For Certain Caregivers And For Nursing Home Employment."***

1 Strike out lines 1 to 146, inclusive, in their entirety and insert the  
2 following in lieu thereof:

3 "Section 1. (NEW) As used in sections 1 to 3, inclusive, of this act:

4 (1) "Commissioner" means the Commissioner of Public Health;

5 (2) "Department" means the Department of Public Health;

6 (3) "Agency" means a home health care agency or a homemaker-  
7 home health aide agency, as defined respectively in section 19a-490 of  
8 the general statutes, as amended by this act;

9 (4) "Home health aide" means a person employed by an agency who  
10 has direct contact with the patients to whom the agency provides  
11 service, but does not include (A) health care providers licensed,

12 certified or registered by the state, or (B) persons, hired directly by the  
13 patient, including, but not limited to, personal care assistants; and

14 (5) "Certified home health aide" means a home health aide who has  
15 been issued a certification pursuant to section 3 of this act.

16 Sec. 2. (NEW) (a) No agency may employ any person as a home  
17 health aide unless: (1) Such person is a certified home health aide; and  
18 (2) the agency obtains a state criminal history records check for such  
19 person that has been conducted within six months of the date of hire.  
20 The agency may request such criminal history records check from the  
21 department, provided, if the department does not have on file a state  
22 criminal history records check for such person that has been conducted  
23 within such time period, the agency shall request a state criminal  
24 history records check from the State Police Bureau of Identification and  
25 shall file a copy of the results of such criminal history records check  
26 with the department. The agency may charge the cost of such criminal  
27 history records check to such person. The department shall maintain a  
28 database of all state criminal history records checks received under this  
29 subsection and may make information contained in such database  
30 available to prospective employers upon the written consent of the  
31 person to whom such information pertains.

32 (b) Notwithstanding the requirements of subsection (a) of this  
33 section, an agency may employ a person to perform the duties of a  
34 home health aide provided: (1) The agency has requested a state  
35 criminal history records check for such person from the department or  
36 the State Police Bureau of Identification; (2) the person is applying or  
37 has applied to the department to become a certified home health aide;  
38 and (3) the person performs home health aide duties only under the  
39 direct supervision of a nurse licensed under chapter 378 of the general  
40 statutes pending such certification and the results of such criminal  
41 history records check.

42 (c) The results of any state criminal history records check conducted  
43 pursuant to subsection (a) of this section shall not be subject to

44 disclosure under the Freedom of Information Act, as defined in section  
45 1-200 of the general statutes, provided the person who is the subject of  
46 such criminal history records check may authorize release of the  
47 criminal history records check to prospective employers.

48 (d) Each agency shall report in writing to the department and to  
49 local law enforcement officials any allegation or evidence of abuse or  
50 neglect of a patient or misappropriation of a patient's funds or  
51 property by any certified home health aide or other employee of the  
52 agency. The agency shall make such report not later than seventy-two  
53 hours after obtaining knowledge of the incident of such abuse, neglect  
54 or misappropriation. Such report shall not be subject to disclosure  
55 under the Freedom of Information Act, as defined in section 1-200 of  
56 the general statutes, and shall not contain the name of the patient  
57 unless the patient authorizes such disclosure. No person making a  
58 report in good faith under this subsection shall be liable in any civil  
59 action for damages brought by such aide or employee. Compliance  
60 with this subsection shall not relieve any person from the duty to  
61 comply with any other applicable reporting requirements of the  
62 general statutes.

63 (e) The Division of State Police, within the Department of Public  
64 Safety, shall assist any agency in conducting a state criminal history  
65 records check requested for a person under subsection (a) of this  
66 section, shall arrange for the fingerprinting of such person and shall  
67 forward such fingerprints to the State Police Bureau of Identification  
68 for completion of such state criminal history records check.

69 Sec. 3. (NEW) (a) No person may use the title "certified home health  
70 aide" or make use of any title, words, letters or abbreviations that may  
71 reasonably be confused with certification as a home health aide unless  
72 such person is certified under this section.

73 (b) The commissioner shall establish by regulation a procedure for  
74 the certification of home health aides. The commissioner shall issue a  
75 certification as a home health aide to any person who successfully

76 completes home health aide training, a competency test and an  
77 evaluation program approved by the department. The training,  
78 competency testing and evaluation may be conducted by an agency or  
79 other entity that the department approves for such training,  
80 competency testing and evaluation. An applicant for certification as a  
81 home health aide need not be employed by such agency or other entity  
82 in order to qualify for such certification.

83 (c) Application for certification as a home health aide shall be on a  
84 form prescribed by the department. The form shall require the  
85 applicant's Social Security number. The application fee for initial  
86 certification under this section shall be twenty-five dollars. A  
87 certification may be renewed pursuant to section 19a-88 of the general  
88 statutes, as amended by this act, for a fee of twenty-five dollars.

89 (d) The department shall adopt regulations, in accordance with  
90 chapter 54 of the general statutes, to carry out the provisions of  
91 sections 1 to 3, inclusive, of this act.

92 (e) The department may take any action set forth in section 19a-17 of  
93 the general statutes if a certified home health aide fails to conform to  
94 the accepted standards of the home health aide profession, including,  
95 but not limited to, the following: (1) Conviction of a felony; (2) fraud or  
96 deceit in professional practice; (3) illegal conduct; (4) negligent,  
97 incompetent or wrongful conduct in professional activities; (5)  
98 emotional disorder or mental illness; (6) physical illness including, but  
99 not limited to, deterioration through the aging process; (7) abuse or  
100 excessive use of drugs, including alcohol, narcotics or chemicals; (8)  
101 wilful falsification of entries in any client or patient record; (9)  
102 misrepresentation or concealment of a material fact in the obtaining or  
103 reinstatement of certification as a home health aide; or (10) violation of  
104 any provision of this section or section 2 of this act. The commissioner  
105 may order a certified home health aide to submit to a reasonable  
106 physical or mental examination if such aide's physical or mental  
107 capacity to practice safely is the subject of an investigation. The  
108 commissioner may petition the superior court for the judicial district of

109 Hartford to enforce such order or any action taken pursuant to section  
110 19a-17 of the general statutes. Notice of any contemplated action under  
111 section 19a-17 of the general statutes, the cause of the action and the  
112 date of a hearing on the action shall be given and an opportunity for  
113 hearing afforded in accordance with the provisions of chapter 54 of the  
114 general statutes.

115 Sec. 4. (NEW) (a) As used in this section:

116 (1) "Commissioner" means the Commissioner of Public Health;

117 (2) "Department" means the Department of Public Health; and

118 (3) "Caregiver" means any individual whose employment or  
119 contractual service with any agency includes (1) providing direct care  
120 services, including, but not limited to, respite care, to clients of such  
121 agency having physical or mental disabilities, (2) having routine  
122 physical access to such clients, or (3) having routine access to the  
123 financial records or assets of such clients, but does not include a home  
124 health aide, as defined in section 1 of this act.

125 (b) No agency may employ any person as a caregiver unless the  
126 agency obtains a state criminal history records check for such person  
127 that has been conducted within six months of the date of hire. The  
128 agency may request such criminal history records check from the  
129 department, provided, if the department does not have on file a state  
130 criminal history records check for such person that has been conducted  
131 within such time period, the agency shall request a state criminal  
132 history records check from the State Police Bureau of Identification and  
133 shall file a copy of the results of such criminal history records check  
134 with the department. The agency may charge the cost of such criminal  
135 history records check to such person. The department shall maintain a  
136 database of all state criminal history records checks received under this  
137 subsection and may make information contained in such database  
138 available to prospective employers upon the written consent of the  
139 person to whom such information pertains.

140 (c) Notwithstanding the requirements of subsection (b) of this  
141 section, an agency may employ a person to perform the duties of a  
142 caregiver subject to the condition of obtaining a state criminal history  
143 records check on such person, provided the agency has requested a  
144 state criminal history records check for such person from the  
145 department or the State Police Bureau of Identification.

146 (d) The provisions of subsections (b) and (c) of this section shall not  
147 apply to any caregiver who is (1) licensed, certified or registered by the  
148 state and is acting within the scope of such license, certificate or  
149 registration in providing services as a caregiver, or (2) required to  
150 submit to a state or federal criminal history records check under any  
151 other provision of the general statutes in order to provide services as a  
152 caregiver.

153 (e) The results of any state criminal history records check conducted  
154 pursuant to subsection (b) of this section shall not be subject to  
155 disclosure under the Freedom of Information Act, as defined in section  
156 1-200 of the general statutes, provided the person who is the subject of  
157 such criminal history records check may authorize release of the  
158 criminal history records check to prospective employers.

159 (f) The commissioner may adopt regulations, in accordance with  
160 chapter 54 of the general statutes, to carry out the provisions of this  
161 section.

162 (g) The Division of State Police, within the Department of Public  
163 Safety, shall assist any agency in conducting a state criminal history  
164 records check requested for a person under subsection (b) of this  
165 section, shall arrange for the fingerprinting of such person and shall  
166 forward such fingerprints to the State Police Bureau of Identification  
167 for completion of such state criminal history records check."

168 Strike out lines 256 to 318, inclusive, in their entirety and insert the  
169 following in lieu thereof:

170 "Sec. 12. Section 19a-491b of the general statutes is repealed and the

171 following is substituted in lieu thereof:

172 (a) Any person who is licensed to establish, conduct, operate or  
173 maintain a nursing home shall notify the [Commissioner of Public  
174 Health] commissioner immediately if the owner, conductor, operator  
175 or maintainer of the nursing home, any person described in  
176 subdivision (3) of subsection (a) of section 19a-491a, or any nurse or  
177 nurse's aide has been convicted of (1) a felony, as defined in section  
178 53a-25, (2) cruelty to persons under section 53-20, or (3) assault of a  
179 victim sixty or older under section 53a-61a, as amended; or has been  
180 subject to any decision imposing disciplinary action by the licensing  
181 agency in [any state, the District of Columbia, a United States  
182 possession or territory or a foreign] this state or any other jurisdiction.  
183 Failure to comply with the notification requirement of this subsection  
184 shall subject the licensed person to a civil penalty of not more than one  
185 hundred dollars.

186 (b) Each nursing home shall require a person described in  
187 subdivision (3) of subsection (a) of section 19a-491a or a nurse or  
188 nurse's aide to complete and sign an application form which contains  
189 questions as to whether the person has been convicted of any crime  
190 specified in subsection (a) of this section or has been subject to any  
191 decision imposing disciplinary action as described in said subsection.  
192 Any person seeking employment in a position connected with the  
193 provision of care in a nursing home who makes a false written  
194 statement regarding such prior criminal convictions or disciplinary  
195 action shall be guilty of a Class A misdemeanor.

196 (c) No nursing home may employ any person as a nurse's aide  
197 unless the nursing home obtains a state criminal history records check  
198 for such person that has been conducted within twenty-four months of  
199 the date of hire. The nursing home may request such criminal history  
200 records check from the department, provided, if the department does  
201 not have on file a state criminal history records check for such nurse's  
202 aide that has been conducted within such time period, the nursing  
203 home shall request a state criminal history records check from the State

204 Police Bureau of Identification and shall file a copy of the results of  
205 such criminal history records check with the department. The nursing  
206 home may charge the cost of such criminal history records check to  
207 such person. The department shall maintain a database of all state  
208 criminal history records checks received under this subsection and  
209 may make information contained in such database available to  
210 prospective employers upon the written consent of the person to  
211 whom such information pertains.

212 (d) Notwithstanding the requirements of subsection (c) of this  
213 section, a nursing home may employ a person to perform the duties of  
214 a nurse's aide subject to the condition of obtaining a state criminal  
215 history records check on such person, provided the nursing home has  
216 requested a state criminal history records check for such person from  
217 the department or the State Police Bureau of Identification.

218 (e) The results of any state criminal history records check conducted  
219 pursuant to subsection (c) of this section shall not be subject to  
220 disclosure under the Freedom of Information Act, as defined in section  
221 1-200 of the general statutes, provided the person who is the subject of  
222 such criminal history records check may authorize release of the  
223 criminal history records check to prospective employers.

224 (f) No nursing home may disclose or use any criminal history  
225 background information acquired under this section for any purpose  
226 except a determination of employment. A violation of this subsection  
227 by a nursing home shall be deemed an unfair or deceptive trade  
228 practice under subsection (a) of section 42-110b. Any nursing home  
229 that, in good faith, fails to employ or discharges any conditionally  
230 employed person based upon information contained in a state criminal  
231 history records check obtained pursuant to this section shall be  
232 immune from civil and criminal liability that might otherwise be  
233 incurred or imposed based on the refusal to hire or discharge.

234 [(c)] (g) (1) The Division of State Police within the Department of  
235 Public Safety shall assist the Department of Public Health in



236 conducting criminal background investigations of persons described in  
237 subdivision (1) of subsection (a) of section 19a-491a.

238 (2) The Division of State Police, within the Department of Public  
239 Safety, shall assist any nursing home in conducting a state criminal  
240 history records check requested for a person under subsection (c) of  
241 this section, shall arrange for the fingerprinting of such person and  
242 shall forward such fingerprints to the State Police Bureau of  
243 Identification for completion of such state criminal history records  
244 check."